IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 34994 of 2005(N)

AGAINST THE ORDER DATED 30/11/2004 IN IN OS 222/92 IN EP.268/2004 of PRL.MUNSIFF COURT, PALAKKAD

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PETITIONER:

MADHAVAN, S/O.CHAMI,
KUNDUMARAPURACKAL, PULLODE,
THENUR, PALAKKAD.

BY ADV. SRI.P.R.VENKATESH.

RESPONDENTS:

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1. VELAN, S/O.PARANGODAN,
KUNDUMARAPURACKAL, PULLODE, THENUR,
PALAKKAD.

2. SIVARAMAN, S/O.CHAMI,
KUNDUMARAPURACKAL, PULLODE, THENUR,
PALAKKAD.

3. GOPALAN, S/O.CHAMI,
KUNDUMARAPURACKAL, PULLODE, THENUR,
PALAKKAD.

BY ADV. SRI.VINOD KUMAR.C

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE REPORT AND PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER.

EXT.P2 : TRUE COPY OF THE DECREE DT.26.07.01 IN OS.222/92 IN THE FILES OF THE MUNSIFF COURT, PALAKKAD.

EXT.P3 : TRUE COPY OF THE EA.344/05 DT.14.6.05 FILED BY THE PETITIONER FOR APPOINTMENT OF AN ADVOCATE COMMISSIONER.

EXT.P4 : TRUE COPY OF THE REPORT AND SKETCH DT.19.11.05 SUBMITTED BY THE ADVOCATE COMMISSIONER STI.T.P.GEORGE FILED IN EP 268/04.

EXT.P5 : TRUE COPY OF THE ORDER DT.30.11.05 IN EP NO.268/04 IN OS.222/92 PASSED BY THE COURT OF THE MUNSIFF, PALAKKAD.

PIUS C.KURIAKOSE,J

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W.P.(C).No.34994 OF 2005

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Dated this the 16th day of July,2007

JUDGMENT

The grievance of the petitioner who was the judgment debtor in a suit for fixation of the boundary is that in respect of Ext.P4 report of the Advocate Commissioner which will show that the boundary has not been put up on the line AC boundary as per decree, the learned Munsiff has passed Ext.P5 turning down his request for remittance on the reason that the decree holder is satisfied with what has been done by the Amin. The court below has also stated that the petitioner has not filed any application for undoing the act of the Amin in carrying out the decree. I find that Ext.P4 Commissioner's report is obtained on a request made by the judgment debtor that the boundary has been presently put up not in terms of the decree, but departing from the correct line AC. The boundary is put up on BC line which according to the petitioner has resulted in a portion of the petitioners property being annexed to that of the respondents. Learned counsel for the respondents would submit that Ext.P4

Commissioner's report, was filed on 19.11.2005 and on the very next posting date, the learned Munsiff passed Ext.P5, as a result of which the respondents were deprived of an opportunity to file objection to Ext.P4. Counsel invited my attention to Ext.P1. Ext.P1 is the Commissioner's earlier report.

2. Having considered the rival contention addressed at the Bar, I am of the view that the learned Munsiff is not justified in approving the action of the Amin, on the reason that the decree holder is satisfied with the same. The learned Munsiff should have seen that under the decree a counter claim which had been filed by the defendant-petitioner had also been upheld in part. What was expected to be done in terms of the decree was to put up a boundary exactly on AC line. Ext.P4 will indicate that the same has not been done.

3. Under these circumstances, I set aside Ext.P5 and direct the learned Munsiff to take a fresh decision on the Execution Petition. The learned Munsiff will allow reasonable time to the respondents to file objection against Ext.P4. Thereafter, the learned Munsiff will consider Ext.P4 and the

objections to be filed by the respondents, hear the parties and pass fresh orders. The learned Munsiff will ensure compliance of the above directions at the earliest and at any rate within two months of receiving copy of this judgment.

The writ petition is disposed of as above.

PIUS C.KURIAKOSE,JUDGE

dvs